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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,552	02/03/2004	Leonard Bell	ALXN-PO1-114	6183

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ROPES & GRAY LLP
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EXAMINER	
VANDERVEGT, FRANCOIS P	

ART UNIT	PAPER NUMBER
1644	

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12/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/771,552	BELL ET AL.	
	Examiner	Art Unit	
	F. Pierre VanderVegt	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *109-120* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *109-120* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20080623*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

The instant application, filed on February 3, 2004, does not claim priority to any earlier application.

Claims 1-108 and 121-171 have been canceled.

Claims 109-120 are currently pending and are the subject of examination in the present Office Action.

In view of Applicant's remarks filed June 23, 2008 the following ground of rejection is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 109-120 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Alexion press release dated January 6, 2003 (CG on form PTO-1449 filed 5/10/2007, of record) in view of Collard et al (Arterioscler Thromb Vasc Biol. [1999]19(11):2623-2629; U on form PTO-892, newly cited).

It was previously stated: "The Alexion press release teaches the use of the anti-C5 antibody compound eculizumab (h5G1.1-scFv) for the treatment of subjects with the hemolytic disease paroxysmal nocturnal hemoglobinuria (see entire document). It is noted that h5G1.1-scFv is the same compound recited in claim 111. The Alexion press release is silent about the treatment of NO deficiency in paroxysmal nocturnal hemoglobinuria. However, because the compound used to treat paroxysmal nocturnal hemoglobinuria in the Alexion press release and the instantly claimed compound to treat NO deficiency in paroxysmal nocturnal hemoglobinuria are the same, the treatment of NO deficiency in paroxysmal nocturnal hemoglobinuria would be an inherent property of the anti-C5 antibody compound eculizumab (h5G1.1-scFv). The prior art teaching anticipates the claimed invention.

The Alexion press release does not specifically link the hemolytic disease with NO deficiency or the effect of h5G1.1-scFv on NO levels.

Collard teaches the treatment of hypoxic HUVECs with h5G1.1-scFv (see entire document). Collard teaches that terminal complement component C5b-9 deposition results in a functional loss of NO-dependent relaxation (page 2625 in particular), increases VCAM-1 expression and decreases cGMP levels (page 2623 and page 2625 in particular). Collard teaches that decreased cGMP levels may compromise vascular blood flow because of decreased endothelium-dependent relaxation and increased adhesion of

neutrophils to the endothelium (page 2623 in particular). Collard teaches that h5G1.1-scFv treatment of the HUVECS attenuates C5b-9 deposition and preserves acetylcholine induced increases in cGMP after hypoxia/reoxygenation (page 2625 in particular).

It would have been prima facie obvious to a person having ordinary skill in the art at the time the invention was made to use the h5G1.1-scFv antibody taught by the Alexion press release for the treatment of NO deficiency in a subject. One would have been motivated to treat NO deficiency with h5G1.1-scFv with a reasonable expectation of success by the showing of Alexion that h5G1.1-scFv treatment of PNH relieved hemolysis and the teachings of Collard that C5b-9 deposition during reoxygenation after a hypoxic event inhibited NO-mediated cGMP expression, which adversely affects vascular blood flow and attracts damaging neutrophils to the endothelial surface. Collard teaches that treatment with h5G1.1-scFv inhibits this C5b-9 deposition and attenuates cGMP loss.

Claims 112-114 are included because, while the references are silent about the proportion of type III red blood cells, silence about a particular property does not necessarily constitute absence of that property. Also, claims 115-117 are included because, while the references are silent about the platelet counts in a subject, silence about a particular property does not necessarily constitute absence of that property. Furthermore claims 118-120 are included because, while the references are silent about the reticulocyte counts in a subject, silence about a particular property does not necessarily constitute absence of that property. The office does not have the facilities and resources to provide the factual evidence needed in order to establish that there is a difference between the materials, i.e., that the claims are directed to new materials and that such a difference would have been considered unexpected by one of ordinary skill in the art, that is, the claimed subject matter, if new, is unobvious. In the absence of evidence to the contrary, the burden is on the Applicant to prove that the claimed materials are different from those taught by the prior art and to establish patentable differences. See In re Best 562F.2d 1252, 195 USPQ 430 (CCPA 1977) and Ex parte Gray 10 USPQ 2d 1922 (PTO Bd. Pat. App. & Int. 1989)."

Applicant's arguments filed June 23, 2008 have been fully considered but they are not persuasive. Applicant argues that the instantly claimed invention cannot be considered obvious over the teachings of the Alexion press release in view of Collard et al because the "Alexion press release was specific to treating PNH patients" and "does not disclose that all patient populations could be treated for NO deficiency with compounds which bind to one or more complement components." Applicant further argues that the artisan would not expect that anti-C5 antibodies would relieve a functional loss of NO-dependent relaxation under all circumstances based on the teaching of Collard et al." Applicant argues therefore that because the scope of the prior art teaching is not as broad as the scope of what is recited in the instant claims, the instantly claimed invention cannot be obvious over the cited references. Applicant's arguments are without merit. In the instant case, the claims are drawn to the genus of conditions involving NO deficiency, while the teachings of the combined references are drawn to a species of NO deficiency in PNH. The prior art does not need to teach the entire genus of the claimed invention. A teaching of a species encompassed by that genus is sufficient to render the genus obvious.

Conclusion

2. No claim is allowed.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Pierre VanderVegt whose telephone number is (571)272-0852. The examiner can normally be reached on M-Th 6:30-4:00 and Alternate Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen O'Hara can be reached on (571) 272-0878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

F. Pierre VanderVegt, Ph.D. /PV/
Patent Examiner
March 17, 2008

/Eileen B. O'Hara/
Supervisory Patent Examiner
Art Unit 1644